

12-24-2015

## State v. Gonzales Appellant's Brief Dckt. 43287

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Gonzales Appellant's Brief Dckt. 43287" (2015). *Not Reported*. 2514.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/2514](https://digitalcommons.law.uidaho.edu/not_reported/2514)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867

BRIAN R. DICKSON  
Deputy State Appellate Public Defender  
I.S.B. #8701  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43287
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY NO. CR 2014-23247
v.	)	
	)	
GILBERT ALEXANDER	)	APPELLANT'S BRIEF
GONZALES, JR.,	)	
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Gilbert Gonzales appeals contending the district court abused its discretion when it imposed his sentence in this case. The record shows that he had begun rehabilitating while in jail, had a reliable employment history, and was a good father and husband. As such, the decision to impose a unified sentence of five years, with two years fixed, as well as the decision to retain jurisdiction rather than suspending the sentence for a period of probation, as the prosecutor recommended, constituted an abuse of the district court's discretion. Therefore, this Court should reduce his sentence as it deems appropriate, or alternatively, remand this case to the district court for a new sentencing hearing

## Statement of the Facts & Course of Proceedings

Mr. Gonzales has an Associate's Degree in information technology and has also worked in his father's roofing company for several years. (Presentence Investigation Report (*hereinafter*, PSI), pp.11-12.)<sup>1</sup> According to his friend and former employer, Mr. Gonzales is a good father and husband, as well as a good worker, and his troubles are due to his struggle with drugs and alcohol. (PSI, p.59 (letter of support for Mr. Gonzales)<sup>2</sup>; see Tr., Vol.2, p.9, Ls.4-9 (identifying the author of the letter).)<sup>3</sup> Presentence evaluations of Mr. Gonzales reached a similar conclusion, noting Mr. Gonzales' problems are related to his drug dependency, particularly, his methamphetamine use. (PSI, pp.44, 54.)

He began using methamphetamine following a break up with his girlfriend. (Tr., Vol.2, p.15, Ls.9-11.) In that state, he began texting her and going to her house on several occasions, which resulted in charges for stalking and violating a no-contact order in this case. (R., pp.6-7.) Mr. Gonzales entered a guilty plea to the stalking charge in this case and a violation of a no contact order from a related case at the initial arraignment hearing in district court. (Tr., Vol.1, p.4, Ls.16-22.) In exchange, the State dismissed the violation of a no-contact order charge in this case and a stalking charge

---

<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic PDF file "CR14-23247 GONZALES #43287 PSI." Included in this file are the PSI report and all the documents attached thereto (police reports, substance abuse evaluations, etc.).

<sup>2</sup> The copy of this letter appearing in the PSI materials is not legible. As such, a motion to correct the record with a legible copy of that letter has been filed contemporaneously with this brief.

<sup>3</sup> The transcripts in this case are provided in two independently bound and paginated volumes. To avoid confusion, "Vol.1" refers to the volume containing the transcript of the arraignment/guilty plea hearing held on March 20, 2015. "Vol.2" refers to the volume containing the transcript of the sentencing hearing held on May 8, 2015.

from the other case. (Tr., Vol.1, p.4, Ls.22-24.) The State also agreed to recommend any sentence be suspended for a period of probation. (Tr., Vol.1, p.4, L.25 - p.5, L.3.)

During his presentence incarceration, Mr. Gonzales participated in the Alcohol Chemical Treatment Series and Grace Recovery programs at the jail. (Tr., Vol.2, p.10, Ls.12-16.) He also expressed his willingness to continue working through rehabilitative programming and Narcotics Anonymous upon his anticipated release. (Tr., Vol.2, p.10, Ls.17-19; PSI, p.18.) He was only rated a moderate risk for recidivism (PSI, p.17), and the GAIN-I evaluation recommended he participate in intensive outpatient treatment. (PSI, p.52.) Mr. Gonzalez had also arranged to be in a sober living environment on release, as he had been accepted into the Lazarus House. (Tr., Vol.2, p.16, Ls.16-21.)

Despite the State's recommendation for probation, the district court decided to impose a unified sentence of five years, with two years fixed, on Mr. Gonzales and, consistent with the PSI author's recommendation, retain jurisdiction over the case. (Tr., Vol.2, p.21, Ls.14-20; R., p.39; PSI, p.18.) Mr. Gonzales was placed in the CAPP rider program. (R., pp.51-52.) According to the online repository, he is scheduled to have a rider review hearing on January 5, 2016. Nevertheless, Mr. Gonzales filed a notice of appeal timely from the Judgment of Conviction. (R., pp.41-43.)

## ISSUE

Whether the district court abused its discretion when it imposed Mr. Gonzales' sentence.

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed Mr. Gonzales' Sentence

The most evident reason the district court abused its discretion by imposing and not suspending the five-year unified sentence, with two years fixed, in this case was actually articulated by the prosecutor: "a long period of probation [is appropriate] so that Mr. Gonzales has time to complete treatment and some supervision for a significant period of time to ensure that he has the tools he needs and the oversight required to prevent him from these kinds of acts in the future." (Tr., vol.2, p.13, L.23 - p.14, L.3.) Thus, as even the prosecutor, the State's representative, determined, the goals of sentencing would be sufficiently addressed in this case by a period of probation.

That acknowledgment was particularly appropriate given Mr. Gonzales' amenability to treatment, evidenced by his efforts to begin rehabilitating during his presentence incarceration. (Tr., Vol.2, p.10, Ls.12-16 (noting Mr. Gonzales' presentence participation in the Alcohol Chemical Treatment Series and Grace Recovery programs); see *a/so* PSI (p.18 (noting Mr. Gonzales' amenability to continuing treatment); Tr., Vol.2, p.10, Ls.17-20 (same).) Additionally, his acceptance of responsibility (waiving the preliminary hearing (R., p.23) and pleading guilty at the arraignment hearing (Tr., Vol.1, p.3, Ls.12-20)) and his expressions of remorse (see, e.g., Tr., Vol.2, p.10, Ls.1-21) demonstrate that he has begun the process of rehabilitation. See *State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010) (recognizing that

acknowledgment of guilt and acceptance of responsibility by the defendant are critical first steps toward rehabilitation).

The prosecutor's probation recommendation also appreciated the efforts Mr. Gonzales had made to secure a supportive and sober living situation upon his release, particularly combined with his plans for continuing treatment within the community. (Tr., Vol.2, p.16, Ls.16-21; Tr., Vol.2, p.10, Ls.17-19; PSI, p.18.) After all, as the GAIN-I concluded, Mr. Gonzales could receive sufficient treatment for the underlying issue – his drug dependence – in the community. (PSI, p.52.) Thus, the district court's decision to forego that opportunity was an abuse of its discretion. What the prosecutor's recommendation reveals is that probationary period would uniquely provide the opportunity for Mr. Gonzales to rehabilitate in a real-world setting, allowing him to apply the lessons he had already gained from his initial rehabilitative efforts, and would continue to gain in out-patient treatment, in a practical setting.

It would also allow him to continue working, and so, contribute to society and provide for his family. (See PSI, pp.11-12 (noting that Mr. Gonzales has employment opportunities within his father's roofing company). As defense counsel pointed out, Mr. Gonzales has joint custody of his daughter. (Tr., Vol.1, p.25, L.15 - p.26, L.4 (noting that his daughter had been living with Mr. Gonzales and her situation was in limbo following his arrest); Tr., Vol.2, p.17, Ls.16-22 (noting that Mr. Gonzales and his daughter were trying to maintain a relationship though she had moved back with her mother).) Thus, the support Mr. Gonzales provides to and receives from his family also indicates that the district court abused its discretion by imposing the sentence it did in

this case, as well as by not suspending that sentence for a period of probation. On either basis, this Court should grant Mr. Gonzales relief in this case.

### CONCLUSION

Mr. Gonzales respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 24<sup>th</sup> day of December, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of December, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

GILBERT ALEXANDER GONZALES  
INMATE #115274  
CAPP  
15505 S PLEASANT VALLEY ROAD  
KUNA ID 83634

LANSING L HAYNES  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JAY LOGSDON  
KOOTENAI COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas